Government of Kerala
1976

Reg. No. KL/TV/12

KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXI] Trivandrum, Wednesday, 6th October 1976 / 14th Asvina 1898 [No. 555

GOVERNMENT OF KERALA

Taxes (A) Department

NOTIFICATION

G. O. Rt. 871/76/TD. *Dated, Trivandrum, 6th October 1976.*

The Government of Kerala are hereby pleased to order the following amendments to the notification G. O. Rt. 1400/69/RD dated the 30th September 1969 published in Kerala Gazette extraordinary No. 240 dated 30th September 1969 as subsequently amended namely:—

AMENDMENTS

In the Schedule to the said Notification.—

1. In serial No. 5 'Ernakulam Division' Col. 4, the figure and word '2 Kothamangalam' shall be substituted by the figure and word '2 Muvattupuzha'.

2. In serial No. 5 'Ernakulam Division' in Col. No. 6, Item 4 Muvattupuzha and 5 Piravom and local areas noted against each

in Col. 7 may be deleted and the following entries shall be substituted Viz.,

Sl. No.	*Name of Division*	*Local area of Division*	*Name of Circle*	*Local area of Circle*	*Name of Ranges*	*Local area of Ranges*
(1)	(2)	(3)	(4)	(5)	(6)	(7)
					4 Kothamangalam	The whole of Kothamangalam taluk.
					5 Muvattupuzha	The whole of Muvattupuzha taluk except the areas covered by Piravom Range.
					6 Piravom	Koothattukulam, Palakuzha, Thirumarady, Elanji, Piravom, Maneed, Ramamangalam, Onakkoor, Memuri.

This amendment shall come into force with effect from 17-10-1976.

By order of the Governor,

J. S. JESUDHASAN,
Secretary to Government.

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PUBLISHED BY AUTHORITY

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SECRETARIAT OF THE KERALA LEGISLATURE

NOTIFICATION

No. 8072/LA4A/76. *Dated, Trivandrum, 6th October 1976.*

The Kerala Tax on Luxuries in Hotels and Lodging Houses Bill, 1976 together with the Statement of Objects and Reasons, the Financial Memorandum and the Memorandum regarding Delegated Legislation is published, under Rule 69 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

Dr. R. Prasannan,

Secretary,
Legislative Assembly.

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TRIVANDRUM, 1976.

33/3824/MC.

Fourth Kerala Legislative Assembly

Bill No. 273

THE KERALA TAX ON LUXURIES IN HOTELS AND LODGING HOUSES BILL, 1976

A

BILL

to provide for the levy and collection of a tax on luxuries provided in hotels and lodging houses.

Preamble.—WHEREAS it is expedient to provide for the levy and collection of a tax on luxuries provided in hotels and lodging houses;

BE it enacted in the Twenty-seventh Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Tax on Luxuries in Hotels and Lodging Houses Act, 1976.

(2) It extends to the whole of the State of Kerala.

(3) It shall be deemed to have come into force on the 1st day of July, 1976.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) "appellate authority" means an appellate authority appointed under sub-section (2) of section 3;

(b) "assessing authority" means an assessing authority appointed under sub-section (1) of section 3;

(c) "Board of Revenue" means the Board of Revenue constituted under the Kerala Board of Revenue Act, 1957;

(d) "company" means a company as defined in section 3 of the Companies Act, 1956;

(e) "hotel" means a building or part of a building where residential accommodation is by way of business provided for a monetary consideration and includes a lodging house.

Explanation.—A guest house run by the Government or a company or a corporation established by or under any law or any

other agency shall be deemed to be a hotel within the meaning of this clause;

(f) "luxury provided in a hotel" means accommodation for residence and other amenities and services provided in a hotel the rate of charges for which (exclusive of charges for food, drink and telephone calls) is fifteen rupees per day or more;

(g) "prescribed" means prescribed by rules made under this Act;

(h) "proprietor", in relation to a hotel, includes the person who for the time being is in charge of the management of the hotel.

3. *Authorities.*—(1) The Government may, by notification in the Gazette, appoint such officers as they think fit to be assessing authorities for the purposes of this Act and may assign to them such local limits as the Government may think fit.

(2) The Government may, by notification in the Gazette, appoint such officers as they think fit to be appellate authorities for the purposes of this Act and may assign to them such local limits as the Government may think fit.

(3) All authorities and officers employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Board of Revenue:

Provided that no such orders, instructions or directions shall be given so as to interfere with the discretion of the appellate authority in the exercise of its appellate functions.

4. *Levy and collection of luxury tax.*—(1) Subject to the provisions of this Act, there shall be levied and collected a tax in respect of any luxury provided in a hotel (hereinafter called the "luxury tax").

(2) The luxury tax shall be payable by the person residing in a hotel, at the following rates, namely:—

(a) Where the rate of charges for accommodation for residence and other amenities and services (exclusive of charges for food, drink and telephone calls) is fifteen rupees or more but does not exceed twenty-five rupees per day per person	Five per centum of such rate
(b) Where such rate exceeds twenty-five rupees but does not exceed fifty rupees per day per person	Seven and a half per centum of such rate
(c) Where such rate exceeds fifty rupees per day per person	Ten per centum of such rate:

Provided that where such charges are levied otherwise than on daily basis or per person, then, the charges for determining the liability to tax under this section shall be computed as for a day and per person based on the period of occupation of the residence for which the charges are made and the number of persons actually occupying or permitted to occupy according to the rules or custom of the hotel.

(3) The luxury tax shall be collected by the proprietor and paid within such period and in such manner as may be prescribed, into a Government treasury.

(4) In computing the luxury tax, a fraction of a rupee which is not a multiple of five paise shall be rounded off to the next higher multiple of five paise.

5. *Returns.*—(1) Every proprietor liable to pay luxury tax under this Act shall submit a return in the prescribed form to the assessing authority within eight days after the end of the month to which the return relates.

(2) Every such return shall show the number of rooms or other accommodation in the hotel which is intended to be occupied, the number of persons who occupied such rooms or accommodation, the periods of their stay, the days of arrival and departure, the amount of charges recovered from them for accommodation and other amenities and services, together with such other information as may be prescribed.

(3) Every such return shall be accompanied by a receipt for payment on Government account into a Government treasury of the full amount of the luxury tax for the period to which the return relates.

(4) Every return shall be verified in the prescribed manner.

6. *Assessment and collection of tax.*—(1) On receipt of a return under section 5, the assessing authority shall assess the luxury tax payable in respect of the period to which the return relates, and if the amount has not already been paid as aforesaid, it shall cause a notice to be served upon the proprietor concerned requiring him to pay the amount assessed within ten days of the service of the notice.

(2) If the proprietor fails to submit in due time the return referred to in section 5, the assessing authority shall, after giving him a reasonable opportunity of being heard, assess to the best of his judgment, the amount of luxury tax payable and the provisions of sub-section (1) in respect of notice shall apply as if such assessment has been made on the basis of a return furnished by such proprietor.

(3) If the luxury tax is not paid within the prescribed period, the assessing authority may levy a penalty equal to a sum not exceeding the amount of the luxury tax payable under this Act:

Provided that no penalty shall be levied under this sub-section unless the proprietor has been given a reasonable opportunity of being heard.

7. *Appeal.*—Any person aggrieved by an order of assessment made or a penalty levied under section 6 may, within thirty days from the date of receipt of the order, apply to the appellate authority for the annulment or modification of the assessment or penalty; and on such application, the appellate authority may, subject to such rules of procedure as may be prescribed, confirm, annul or modify the assessment or penalty.

8. *Revision.*—(1) The Board of Revenue may, either *suo motu* or on application, call for and examine the record and proceedings of any order made by the assessing authority and pass such order thereon as it thinks just and proper:

Provided that no application under this sub-section shall be entertained if it is not made within a period of ninety days from the date on which the order in question was received by the applicant:

Provided further that, before rejecting any application under this sub-section, the Board of Revenue shall record reasons for such rejection.

(2) No order shall be passed under sub-section (1) which is likely to affect any person adversely, unless such person has been given a reasonable opportunity of being heard.

(3) Where a person could have appealed under section 7 and no appeal has been filed by him, no proceedings under this section shall be entertained upon the application of such person.

9. *Court fees.*—Notwithstanding anything contained in the Kerala Court Fees and Suits Valuation Act, 1959 (10 of 1960), an appeal preferred under section 7 or an application for revision made under section 8 shall bear a court fee stamp of such value as may be prescribed.

10. *Recovery of unpaid luxury tax.*—Any luxury tax or penalty recoverable under this Act and remaining unpaid may be recovered as an arrear of public revenue due on land.

11. *Service of notice.*—A notice under the provisions of this Act may be served by post or by delivering or tendering it to the person to whom it is addressed or to his agent or in such other manner as may be prescribed.

12. *Power to inspect and take copies of records and accounts.*—(1) The assessing authority shall have access at all reasonable times to a hotel or place of business of any person liable to collect or pay the luxury tax under this Act.

(2) The assessing authority may, at any time, with or without notice to any person referred to in sub-section (1), examine his working records and accounts and take copies of, or extracts from, any of the said records or accounts for purposes of testing the accuracy of any return or for informing itself as to the particulars regarding which information is required for the purposes of this Act or any rule made thereunder.

13. *Power to order production of accounts and powers of entry, inspection, etc.*—(1) The assessing authority may, for the purposes of this Act, by notice, require any proprietor,—

(a) to produce or cause to be produced before it any accounts, registers, records or other documents; or

(b) to furnish or cause to be furnished any other information relating to the hotel; and such proprietor shall comply with such requisition.

(2) The assessing authority may, at any reasonable time,—

(a) enter any hotel or place of business or any vehicle or vessel of the proprietor; and

(b) inspect any accounts, registers, records or other documents relating to his hotel or hotels.

(3) If the assessing authority has reasons to believe that a proprietor is trying to evade the collection or payment of the luxury tax, it may, for reasons to be recorded, enter and search—

(a) any hotel or place of business of the proprietor; or

(b) any other place where the proprietor is keeping or is reasonably believed to be keeping any accounts, registers, records or other documents relating to his hotel or hotels:

Provided that no residential accommodation (not being a hotel-cum-residence) shall be entered into or searched unless the assessing authority is specially authorised in writing by the Board of Revenue to search that accommodation.

Explanation.—For the purposes of clause (b), 'place' includes any godown, building, vessel, vehicle, box or receptacle.

(4) All searches under this section shall, so far as may be, be made in accordance with the provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974).

(5) The assessing authority making the inspection or search may seize such accounts, registers, records or other documents as it considers necessary, and on such seizure shall grant the proprietor a receipt of the things seized.

(6) The accounts, registers, records or other documents seized under sub-section (5) shall not be retained by the assessing authority beyond a period of thirty days from the date of seizure except with the permission of such authority as may be specified by the Government in this behalf, unless they are required for any prosecution under this Act:

Provided that the authority specified by the Government under this sub-section shall not give permission to retain such accounts, registers, records or other documents beyond a period of forty-five days from the date of the seizure.

(7) The power conferred by sub-sections (3) and (5) shall include—

(a) the power to break open any box or receptacle or place or the door of any premises in which any accounts, registers, records or other documents of the proprietor are reasonably believed to be kept:

Provided that the power to break open the door of any premises shall be exercised only after the owner or any other person in occupation of the premises fails or refuses to open the door on being called upon to do so;

(b) the power to seal any box or receptacle, godown or building, where any accounts, registers, records or other documents are or are reasonably believed to be kept, if the owner or any other person in occupation leaves the premises or refuses to open the box or receptacle, godown or building, or is not available, and then to break open such box, receptacle, godown or building, on the authority of an authorisation in writing by the Board of Revenue;

(c) the power to search any person who has got out of, or is about to get into, or is in, any place referred to in clause (a) or clause (b) of sub-section (3) or any vessel or vehicle of any proprietor, if the assessing authority has reasons to suspect that such person is secreted about his person any accounts, registers, records or other documents.

14. *Power to take evidence on oath, etc.*—The assessing authority, the appellate authority and the Board of Revenue shall, for the purposes of this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (Central Act

5 of 1908), when trying a suit, in respect of the following matters, namely:—

(a) enforcing the attendance of any person and examining him on oath or affirmation;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses.

15. *Refunds.*—(1) If any proprietor satisfies the assessing authority that the amount of the luxury tax paid by him exceeds the amount of such tax payable by him under this Act, he shall be entitled to a refund of such excess.

(2) The appellate authority in the exercise of its appellate powers or the Board of Revenue in the exercise of its revisional powers, if satisfied to the like effect, shall cause a refund to be made by the assessing authority of any amount found to have been wrongly paid or paid in excess.

16. *Limitation of claims for refund.*—No claim to any refund of the luxury tax under section 15 shall be admitted unless it is made within three years from the date of the order of assessment or, where an appeal has been preferred or where there has been a revision, within three years from the date of the order in appeal or revision, as the case may be.

17. *Penalties.*—(1) Any person who—

(a) knowingly submits an untrue return or fails to submit a return as required by this Act or the rules made thereunder;

(b) wilfully acts in contravention of any of the provisions of this Act or the rules made thereunder for the contravention of which no express provision for punishment is made by this Act,

shall be punishable with fine which may extend to one thousand rupees.

(2) Any person who—

(a) prevents or obstructs inspection, entry, search or seizure by the assessing authority; or

(b) fraudulently evades the payment of luxury tax or other amount due from him under this Act,

shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

(3) A person shall not be proceeded against under this section except at the instance of the assessing authority.

18. *Offences by companies.*—(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary, or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

19. *Bar of jurisdiction.*—No suit shall lie in any civil court to set aside or modify any assessment made under this Act and no prosecution, suit or other legal proceeding shall lie against the Government or any authority or officer for anything in good faith done or intended to be done under this Act.

20. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules for carrying into effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form in which returns shall be submitted under section 5, further information to be furnished with the returns and the manner in which the returns shall be verified;

(b) the form of notice to be served under section 6 and the procedure to be followed for assessment and collection of the assessed dues;

(c) the procedure to be followed by the appellate authorities;

(d) the value of court fee stamp on an appeal or application for revision;

(e) the other manner in which a notice may be served;

(f) the procedure for inspection and taking copies of records and accounts;

(g) the fees to be paid for any of the matters provided in this Act; and

(h) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before the Legislative Assembly, while it is in session, for a total period of thirty days, which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

21. *Power to remove difficulties.*—If any difficulty arises in giving effect to the provisions of this Act, the Government may, as occasion may require, by order do anything not inconsistent with the provisions of this Act which appears to them necessary for the purpose of removing the difficulty.

22. *Repeal and saving.*—(1) The Kerala Tax on Luxuries in Hotels and Lodging Houses Ordinance, 1976 (5 of 1976), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act.

STATEMENT OF OBJECTS AND REASONS

The Minister for Finance in his Budget Speech on the 19th March, 1976, announced among other things that with a view to enabling persons who take food from hotels to get food at cheaper rates, the sale of cooked food in all hotels would be exempted from salestax and that to make good a part of the loss of revenue involved

in the exemption, a luxury tax on the bigger hotels with reference to the standard of comforts that are provided to the occupants would be introduced. Sales of cooked food in hotels and restaurants have been exempted with retrospective effect from the 1st April, 1976, by promulgating the Kerala General Sales Tax (Third Amendment) Ordinance, 1976 (9 of 1976).

2. In the interest of revenue, it was considered necessary to levy luxury tax, as announced in the budget speech, as early as possible. As the Legislative Assembly was not in session, the proposal was given effect to by promulgating the Kerala Tax on Luxuries in Hotels and Lodging Houses Ordinance, 1976 (5 of 1976) on the 26th day of June, 1976. The Bill seeks to replace the Ordinance by an Act of the Legislature.

FINANCIAL MEMORANDUM

Clause 3 of the Bill seeks to empower the Government to appoint such officers as they think fit to be assessing authorities and appellate authorities for the purposes of the Act. Appropriate Officers of the Agricultural Income-tax and Sales Tax Department are proposed to be appointed as assessing authorities and appellate authorities for the purposes of the Act. No expenditure would therefore be involved on account of the appointment of these authorities. Expenditure may, however, be involved in the printing and supply of the various forms and registers to be prescribed under the Act. Such expenditure will be negligible and can be accommodated within the budget provision.

2. No non-recurring expenditure will be involved by the enactment of the Bill.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill seeks to empower the Government to appoint, by notification in the Gazette, assessing authorities and appellate authorities for the purposes of the Act. Clause 20 of the Bill seeks to empower the Government to make rules for carrying out the provisions of the Act. The matters in respect of which rules may be made relate, *inter alia*, to the form in which returns should be submitted, the further information to be furnished with the returns, the manner in which returns should be verified, the form of notice to be served on the assessee, the procedure to be followed for assessment and collection of the assessed dues, the procedure to be followed by the appellate authorities, the value of court fee stamps on appeals or applications for revision and the procedure for

inspection and taking copies of records and accounts. Clause 21 of the Bill seeks to empower the Government to issue orders not inconsistent with the provisions of the Act for the purpose of removing any difficulty that may arise in giving effect to such provisions.

2. The matters in respect of which notifications or orders may be issued or rules may be made are matters of administrative or routine nature or matters of detail. Further, the rules, after they are made, are subject to scrutiny by the Legislative Assembly. The delegation of legislative power is, thus, of a normal character.

K. M. MANI